

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (hereinafter "AGREEMENT") is made by and between Plaintiff BLAKE EARL DUPREE (hereinafter "PLAINTIFF") and in favor of Defendants, COUNTY OF LOS ANGELES (hereinafter "COUNTY"), COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT, LEE BACA, JAMES TATREAU, DANIEL HOLGUIN, JASON LOPEZ, MARTIN ACOSTA, RALPH RUEDAS, ANITA LIMBRICK, MARK LEACH, RONALD VANDE VEGTE, and JOSE GUERRA (hereinafter collectively "DEFENDANTS"), in connection with *Blake Earl Dupree v. County of Los Angeles et al.*, United States District Court Central District of California case number CV 09-1110 AHM (SSx).

### RECITALS

- a. This action arises out of an incident which occurred on or about February 27, 2008 at Lakewood Station.
- b. On or about February 17, 2009, PLAINTIFF filed a Complaint in the United States District Court Central District of California, Case Number CV 09-1110 AHM (SSx) containing allegations against DEFENDANTS for various allegations, including civil rights violations (42 U.S.C. § 1983), intentional infliction of emotional distress, assault and battery, negligent supervision and training, and general negligence.
- c. Subject to the approval of the County of Los Angeles Claims Board and Board of Supervisors, PLAINTIFF and DEFENDANTS have entered into a settlement of the aforementioned lawsuit as against all DEFENDANTS.

**NOW, THEREFORE**, in consideration of the foregoing promises set forth below, it is agreed:

#### 1.0 PAYMENT BY COUNTY:

The Parties hereby enter into a cash settlement for a total of Four Million Two Hundred Fifty Thousand Dollars and No/100 (\$4,250,000.00) and a non-cash settlement whereby DEFENDANTS will assume all and any of PLAINTIFF's past medical costs, including medical liens incurred as of November 3, 2010. As of the date of this Agreement, those bills and liens are estimated by Defendants to be \$1,208,011.00. The Parties have agreed that COUNTY will utilize a portion of the \$4.25 Million to purchase an annuity for the benefit of PLAINTIFF, which will be set forth in an Addendum to this AGREEMENT upon approval of the settlement by the County of Los Angeles Board of Supervisors.

Said payments shall constitute full and final settlement of all pending matters pertaining to the incident and claims asserted by PLAINTIFF as against all DEFENDANTS.

## **2.0 RELEASE FROM ALL CLAIMS AND LIABILITIES:**

Except for the liabilities and obligations arising out of this AGREEMENT, PLAINTIFF hereby waives, releases, acquits and discharges from the beginning of time, and in and for the future, COUNTY OF LOS ANGELES, and its respective agents, employees, attorneys, representatives, successors, assigns, and in particular, LEE BACA, JAMES TATREAU, DANIEL HOLGUIN, JASON LOPEZ, MARTIN ACOSTA, RALPH RUEDAS, ANITA LIMBRICK, MARK LEACH, RONALD VANDE VEGTE, and JOSE GUERRA, of and from any and all sums of money, accounts, claims, demands, contracts, actions, liabilities, debts, controversies, agreements, damages, and causes of action whatsoever, of whatever kind or nature, whether known or unknown, contingent or liquidated, suspected or unsuspected, including wrongful death, which PLAINTIFF now owns, holds, has or claims to have against any or all DEFENDANTS relating to the incident which occurred on or about February 27, 2009 and the injuries sustained thereby, specifically, but not exclusively, and without limiting the generality of the foregoing, any and all claims, damages, demands and causes of action, known or unknown, contingent or liquidated, suspected or unsuspected, by reason of any matter or thing alleged or referred to, directly or indirectly, or in any way connected with or arising out of all or any of the matters, facts, events, occurrence, alleged or referred to in the litigation to which this AGREEMENT relates or in any of the recitals set forth in this AGREEMENT. It is the specific and express intention that this AGREEMENT dispose of all of PLAINTIFF's claims against DEFENDANTS from the beginning of time to the future, and that the waivers and releases provided in this paragraph and set forth in paragraph 3.0 herein below shall constitute, be deemed, understood, and act as a full release of all past, present, and future claims that may arise from the hereinmentioned matters and issues as set forth in the recitals hereinabove or alleged or referred to in this litigation.

## **3.0 WAIVER OF CIVIL CODE § 1542:**

With respect to the specific subject matter of the Release Agreement set forth in paragraph 2.0 above, PLAINTIFF and DEFENDANTS hereby waive against each other all rights under California Civil Code § 1542 which states in pertinent part as follows:

"A general release does not extend to claims which the creditor does not know or suspect exists in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The parties understand and acknowledge the significance and consequence of the specific waiver of California Civil Code § 1542, along with the benefit and effect of California Civil Code § 1542, and hereby assume full responsibility for any and all injuries, damages, losses, expenses, and claims before and hereinafter incurred in relation to the aforementioned disputes and/or claims.

#### **4.0 LIENS AND INDEMNIFICATION:**

COUNTY has agreed to assume all medical costs and liens which were in existence at the time the Parties reached agreement on November 3, 2010. Specifically, COUNTY assumes the liens from the following facilities: County + U.S.C. Medical Center and Rancho Los Amigos National Rehabilitation Center.

As to any liens not specified above, PLAINTIFF and his attorneys warrant and represent that they will be responsible for paying any outstanding liens or claims for reimbursement or subrogation for medical expenses, wage loss and/or disability benefits, or any other claims or liens, from the settlement proceeds provided by COUNTY to PLAINTIFF or by any other sources to satisfy such liens and claims.

In the event that any action is brought with regard to PLAINTIFF or in connection with any outstanding liens against DEFENDANTS in connection with the matters referred to in this settlement and/or PLAINTIFF's claims, PLAINTIFF and his attorneys warrant that they will indemnify, defend, and hold harmless DEFENDANTS and each of its respective agents, employees, predecessors, successors, attorneys, or assignees, from any and all claims, damages, liabilities, obligations, costs, expenses, liens, suits, actions, or causes of action.

#### **5.0 CONSIDERATION OF MEDICARE:**

It is not the purpose of this AGREEMENT to shift responsibility of medical care in this matter to the Medicare program. Instead, this AGREEMENT is intended to resolve a dispute between PLAINTIFF and DEFENDANTS.

Pursuant to 42 U.S.C. §1395 y(b)(2), 42 C.F.R. §411.46, 42 C.F.R. §411.47, the Medicare Intermediary Manual, and the Medicare Carrier's Manual, the parties believe that any rights or interests that Medicare may have in the settlement have been adequately considered and protected. The Parties, believing that said rights or interests have been adequately protected, do hereby enter into a settlement. As of the date of the Court approval of and entry of the Dismissal with prejudice, neither DEFENDANTS and each of its respective agents, assignees, employees, predecessors, successors, attorneys, nor PLAINTIFF's attorneys, shall have any further responsibility of any kind for the future medical expenses, if any, for PLAINTIFF.

**A. Conditional Payments**

PLAINTIFF has been advised and fully understands that conditional payments (any benefits paid by Medicare up to the date of settlement), if any, are the sole responsibility of PLAINTIFF and must be satisfied out of these settlement proceeds. It will be the responsibility of PLAINTIFF to resolve all outstanding conditional payments owed to Medicare. PLAINTIFF agrees to indemnify, defend and hold DEFENDANTS harmless from any action by Medicare seeking payment of past medical expenses/conditional payments.

**B. Future Medical Expenses the Sole & Exclusive Responsibility of PLAINTIFF:**

The Parties have appropriately considered Medicare's interest and have concluded that no funds should be set aside for the PLAINTIFF's future medical care based on the disputed nature of the claim. PLAINTIFF is not being compensated for any future medical expenses. All future medical care and costs are the sole responsibility of PLAINTIFF. PLAINTIFF agrees to indemnify, defend and hold DEFENDANTS harmless from any action by Medicare seeking payment or reimbursement for post-settlement medical payments. This settlement is based upon a good faith determination of the parties in order to resolve a questionable claim. The parties have attempted to resolve this matter in compliance with both state and federal law and it is believed that the settlement terms adequately consider Medicare's interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. § 1395y(b). The parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement, or on PLAINTIFF's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this liability settlement.

**C. Hold Harmless:**

PLAINTIFF agrees to indemnify, defend and hold DEFENDANTS harmless from any action by Medicare seeking payment of past, current, or future medical expenses for the PLAINTIFF. PLAINTIFF shall further hold DEFENDANTS harmless from any and all adverse consequences in the event this settlement results in the loss of right to Social Security and/or Medicare benefits to the extent PLAINTIFF would have been entitled to those benefits in the absence of this settlement agreement.

**6.0 ADVICE OF COUNSEL:**

Each party warrants and represents that she/he/it has obtained the independent advice of legal counsel, prior to signing this AGREEMENT. Each party executes this AGREEMENT voluntarily with full knowledge of its significance, and with the

express intention of extinguishing all obligations, except as may otherwise be set forth herein.

**7.0 SUCCESSORS AND ASSIGNS:**

Each party understands and agrees that the agreements, undertaking, acts and other things done or to be done by either party in relation to this AGREEMENT shall run to and be binding upon each party's heirs, successors, executors, administrators, and assigns.

**8.0 COMPROMISE OF DISPUTED CLAIMS:**

Each party understands and agrees that by the execution of this AGREEMENT neither party admits any liability on its or his part but instead agree that said settlement is the compromise of disputed claims and is made solely to avoid the cost and risk of continued litigation.

**9.0 ENTIRE AGREEMENT:**

This document contains the entire AGREEMENT and understanding of the parties concerning the subject matter of this AGREEMENT, and supercedes and replaces all prior negotiations and agreements, written or oral. This is an integrated AGREEMENT.

**10.0 WARRANTY OF NO TRANSFER:**

Each party hereby represents and warrants that he/it has not heretofore or otherwise assigned and transferred, or purported to assign or transfer to any person, firm or corporation whatsoever any of the claims released under this AGREEMENT.

**11.0 COSTS AND FEES:**

Each party shall bear her/its/his own costs and attorneys' fees incurred in this lawsuit.

**12.0 ENFORCEMENT AND CONSTRUCTION:**

This AGREEMENT shall be enforced and construed pursuant to the laws of the State of California.

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### **13.0 EXECUTION OF AGREEMENT BY COUNTERPARTS:**

The parties' intention to join in and be bound by this AGREEMENT may be expressed in separate counterpart signature pages which will be considered as part of this AGREEMENT as though the original of said AGREEMENT had been executed by the parties simultaneously in one document on a single occasion, and such signatures may appear on a facsimile or electronic transmission with full force and effect as though signed in simultaneous execution of this AGREEMENT by all parties hereto.

### **14.0 COOPERATION:**

The parties will cooperate in all reasonable requests for any judicial or documentary act necessary to accomplish the completion of the terms of this AGREEMENT.

### **15.0 SEVERABILITY**

The invalidity or unenforceability of any particular provision of this AGREEMENT shall not affect the other provisions, and this AGREEMENT shall be construed in all respects as if any invalid or unenforceable provision were omitted.

### **16.0 AMENDMENT AND WAIVER**

This AGREEMENT may be amended, modified, or supplemented only by a writing executed by each of the parties hereto. Either party may in writing waive any provision of this AGREEMENT to the extent such provision is for the benefit of the waiving party. No waiver by either party of a breach of any provision of this AGREEMENT shall be construed as a waiver of any subsequent or different breach, and no forbearance by a party to seek a remedy for noncompliance or breach by the other party shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

### **17.0 STRUCTURED SETTLEMENT**

PLAINTIFF has decided to exercise the option to fund a structured settlement using Atlas Settlement Group, Inc.

THE UNDERSIGNED HAVE READ THE FOREGOING SETTLEMENT  
AND RELEASE AGREEMENT (INCLUDING THE RECITALS AND  
SECTIONS 1.0 THROUGH 17.0 HEREINABOVE) AND DO FULLY  
UNDERSTAND IT AND AGREE TO ITS TERMS

Dated: 10-11-10

By: Blake Earl Dupree  
BLAKE EARL DUPREE

**APPROVED AS TO FORM:**

Dated : 11-15-10

THE SANDERS FIRM LLP

By: [Signature]  
Justin Sanders, Esq.  
Attorneys for Plaintiff BLAKE EARL  
DUPREE